Reserved Judgment

THE HIGH COURT OF UTTRANCHAL AT NAINITAL.

Appeal From Order No. 416 Of 2001

(Old No. 1030 of 1993)

The New India Assurance Company Ltd.,
Hardwar.

...Appellant.

Versus

1. Smt. Sushila Devi Widow of late Darwan Lal.
2. Sunil Kumar minor Son of Late Darwan Lal.
3. Anil Kumar minor Son of Late Darwan Lal.
4. Km. Rita minor daughter of Minors, claimants-Respondents 2,3, and 4 all under the guardianship of Their mother and natural guardian Smt. Sushila Devi. All claimants-respondents of village Kandai, P.C. Manakhi, Police Station, Teshil and District Chamoli.
5. Shasi Dhar Dimri R/o Town and Post office Karn Prayag, District- Chamoli.

... Respondents.

Sri T.A.Khan, Advocate, learned counsel for the appellant.
Sri Pankaj Purohit, Adv., learned counsel for the owner-respondent no.5.

Date August 31, 2006.

PC: Hon'ble B.S. Verma, J.

This appeal under Section 173 of the Motor Vehicles Act, 1988 **(*for short the Act)*** is directed against the judgment and award dated 9-7-1993, passed by the Motor Accident Claims Tribunal Chamoli **(*in short the Tribunal)*** in M.A.C. Petition No. 3 of 1990, Smt. Sushiula Devi Vs. New India Assurance Company Ltd. and others, whereby the learned Tribunal has awarded compensation of Rs. 25,000/- only in favour of the claimant as against the Insurance Company-appellant under the provisions of Section 140 of the Act holding that the claimant failed to prove the negligence on the part of the driver of the offending vehicle.

2. Brief facts giving riser to this appeal are that Darwanlal, husband of claimant No.1 Sushila Devi, aged about 28 years and a labourer earning Rs. 1000/- per month lost his life in a vehicular accident, which occurred on 2-8-1989 involving Truck No. UMS-8153. The truck was owned by Sashidhar Dimari and it was duly

insured with New India Assurance Company-appellant. The claimants, who are legal heirs and dependents of the deceased, have filed claim petition for compensation of Rs. 1,50,000/-.

The claim petition was resisted by the insurance company as well as owner of the vehicle. They denied the allegations made in the claim petition. The learned Tribunal framed the following issues in the case:-

1. Whether the deceased Darwan Lal R/O village Kandai was travelling in truck No. UMS 8153 from Rishikesh to Manakhi on 2.8.89 and the said truck met with accident at Bhorigad and the deceased Darwan Lal died?

2. Whether the accident took place due to the rash and negligent driving by the driver of the vehicle met with accident?

3. Whether the accident took place due to the mechanical defects in the vehicle?

4. Whether the truck of O.P.No.3 was goods carrier and it was not authorised for carrying passengers and whether the fact of boarding of deceased Darwan Lal in the said truck was not told to the O.P.No.3 as alleged in para-10 of his W.S.?

5. Whether the truck met with accident was insured upto 3-4-89 in the office of O.P.No.1 and O.P.No.3 had cancelled the policy No.3132190300424 on 17.3.89 because there was no balance at District Co-operative Bank Karanprayag against cheque issued by O.P.No.3?

6. Relief, amount of compensation which is payable to the claimants and from which opposite parties?

The learned Tribunal recorded the evidence led by the parties, heard them and after perusing the evidence held that the deceased died in the motor vehicle accident on 2-9-1989. It was further held that the accident took place due to mechanical defect and not due to the negligence on the part of the driver of the offending truck. It was also held that the deceased was a labourer in

the vehicle in question. It was also held that the truck was duly insured on the date of accident and bouncing of cheque does not affect the third party coverage under the insurance. It was concluded that the policy in question was cancelled subsequently, therefore, the insurance company was held liable to make payment of compensation. Ultimately, the learned Tribunal found that there was no negligence on the part of the truck driver, therefore, under the provisions of section 140 of the Act, compensation of Rs. 25,000/- was awarded in favour of the claimants. Accordingly, the claim petition was decreed against the appellant-insurance company and liberty was given to the insurance company to file civil suit for recovery of compensation amount in case the policy was void, as mentioned in the impugned order.

In this appeal, the impugned judgment and award has been assailed mainly on the ground that the Tribunal committed illegality in holding the insurance company liable to make payment of compensation because the insurance policy was cancelled. It was also contended that the deceased was not a labourer, therefore, the award is liable to be set aside against the insurance company.

I have heard learned counsel for both the parties and have gone through the entire material on record including the lower court record. It may be mentioned that the claimant-respondents have not come forward to contest the appeal in spite of sufficient service. Only the appellant and the owner of the vehicle have put in appearance to contest the appeal.

Having considered the rival contentions of the parties and after perusing the entire record, I am not inclined to accept the contentions raised by the insurance company in the present appeal for the reasons herein mentioned.

At the outset it may be mentioned that the learned Tribunal has already given liberty to the Insurance Company to file a

suit before the competent court for recovery of compensation amount paid by the insurance company in case, the Insurance Policy was void for having been cancelled due to bouncing of cheque by the Bank issued by the owner. In view of the liberty already given by the Tribunal in favour of the insurance company, there is no valid ground open to the Insurance Company. Apart from it, I proceed to mention the reason for rejecting the appellant's contentions.

Firstly, in the written statement filed by the Insurance Company, it was pleaded that the Insurance Policy was cancelled, but strangely enough the Insurance Company could not disclose the date of cancellation of the policy for the reasons best known to it. It was probably because the policy was cancelled much after the date of accident. The learned Tribunal has rightly observed that the Insurance Company remained silent upto 12-12-1989, though the cheque was dis-honoured by the banker on 28-5-1989. This is a strong circumstance which goes against the appellant. Moreover, under the Motor Vehicles Act 1988, the insurance of vehicle is compulsory, therefore, even if it be presumed that there was no policy on the date of accident, it does not affect the third party risk in any manner and the learned Tribunal has rightly given a categorical finding to this effect. It is not disputed the policy was cancelled in the month of December 1989.

Secondly, the owner of the vehicle filed his written statement. I have gone through the entire pleadings made therein. The owner of the vehicle could not specifically deny that the deceased was not a labourer in the vehicle. In the written statement, there is general denial of the facts. Claimant No.1 Sushila Devi was examined before the Tribunal. She has clearly stated that her husband was under the employment of owner of the vehicle Shashidhar Dimri in the said truck. She was cross-examined by the appellant and she reiterated that deceased was doing the work of *Munshi* and he used to work in the ill-fated truck. Thus, it is proved on record that the deceased was a labourer of the truck in question.

No evidence to the contrary has been led by the appellant in the matter. Therefore, being a labourer in the truck, the deceased was an authorized person to travel in the vehicle.

Thirdly, the true copy of Insurance Policy is on record as paper no. 23-C. The policy was issued on 4.4.1989 and 3.4.1990 is mentioned as date of expiry. In the schedule of Premium, there is endorsement that premium of Rs. 24/- was charged in respect of two coolie towards third party risk. The Insurance Company after having received the cheque dated 15.3.1989 kept mum till 12.12.1989, while the truck met with an accident on 2.9.1989. The record shows that all exercise for cancellation of policy etc. was done only after 12.12.1989. Since the learned Tribunal has already given liberty to the appellant for redressal of its grievance, therefore, I need not enter into the merit regarding the validity of the policy on the date of accident. However, the order of the learned Tribunal requires to be modified because the Tribunal had given liberty to the Insurance Company to file a suit before competent court. The law under the Act provides that for redressal of disputes, it is for the Motor Accident Claims Tribunal concerned to decide the issue itself. The appellant may file objections before the Tribunal and the tribunal after affording opportunity of hearing to the owner of the vehicle shall decide the dispute between the insurer and the insured in accordance with law.

For the reasons above, the judgment and award under appeal does not suffer from any infirmity and illegality and the same is devoid of merit and is liable to be dismissed.

The appeal is hereby dismissed on merit. The impugned order is modified to the extent that the grievance between the insurer and the insured shall be decided by the Tribunal itself in accordance with law after affording opportunity of hearing as well as to lead evidence to the insurance company and the owner of the vehicle. In case, the objection of the insurance company is

established, the Tribunal shall direct for recovery of compensation amount from the owner to be paid to the insurer. No order as to costs.

The amount in deposit with this Court if any be remitted to the Motor Accident Claims Tribunal concerned for being paid to the claimants.

(B.S.Verma, J.)

RCP